

U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, DC

In the Matter of:

GREATER ORLANDO
AVIATION AUTHORITY,

Respondent.

Docket No. FAA-2018-0659

Case No. 2017SO190044

**RESPONDENT'S APPLICATION FOR FEE AWARD AND EXPENSES UNDER THE
EQUAL ACCESS TO JUSTICE ACT AND UNOPPOSED REQUEST TO STAY
PETITION UNTIL RESOLUTION OF PETITIONER'S APPEAL¹**

I. INTRODUCTION

The Greater Orlando Aviation Authority (hereinafter "GOAA"), respectfully petitions this Court to award the GOAA its reasonable attorneys' fees and costs of litigation pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d)(1). The final application will be supported by the declaration of Nicolette Corso Vilmos, lead attorney for GOAA and the relevant time for the attorneys and paralegals involved in the case and expense summaries will be included.

EAJA provides that the Court "shall" award attorneys' fees and expenses to a prevailing party unless the United States can demonstrate that its position was substantially justified. 28 U.S.C. § 2412(d)(1)(A). Based on this Court's rulings, GOAA is the prevailing party and the FAA's positions were not substantially justified, GOAA respectfully seeks an award of fees and expenses, as will be further detailed and explained in an amended motion/application after the

¹ Contemporaneously with this Motion, GOAA has filed an Unopposed Motion To Stay Time To File Attorneys' Fees And Cost Petition Under The Equal Access To Justice Act ("EAJA"), 28 U.S.C. § 2412(d)(1)

FAA's appeal reaches final adjudication, or by further Order of this Court.

GOAA has contemporaneously filed a Motion To Stay Time To File Attorneys' Fees And Cost Petition Under The Equal Access To Justice Act ("EAJA"), 28 U.S.C. § 2412(d)(1) and believes that the time for filing a full EAJA application is not due until 30 days after a final order arising from the FAA's appeal is entered, if applicable. As such, GOAA is filing this motion/application in an abundance of caution, and requests leave to amend it in order to further expand the facts, analysis and breakdown of attorneys' fees and costs, after the FAA's appeal reaches its final adjudication.

BRIEF STATEMENT OF THE FACTS AND ARGUMENT

Having rendered a decision on the merits, the Court is familiar with the underlying facts of this case. Accordingly, GOAA will review only those facts that are most relevant to this petition. The FAA filed suit on February 24, 2018 Complaint, the FAA charged GOAA with one (1) violation of 14 C.F.R. §153.5. The FAA alleged that on February 8, 2017, an FAA Inspector arrived at Orlando International Airport ("MCO") on official business. The FAA proposed a \$32,140 civil penalty as "appropriate" for this alleged violation, based on the "the facts and circumstances of this case and in accordance with the . . . Sanction Guidance in FAA Order 2150.3B, Appendix B." (Compl. 2 § III, ¶ 3). In response, GOAA disagreed (Am. Ans. 2, § II, ¶¶ 7-8). Thereafter, on June 11, 2020, the FAA filed by e-mail its Motion for Summary Judgment ("Motion"). On April 1, 2021, the Court entered an Order Denying the FAA's Motion for Summary Judgment and Setting Deadlines for Supplemental Filings. On August 18, 2021 the Court entered an Order granting Summary Judgment in favor of GOAA.

This Court ruled on the merits in GOAA's favor, making findings, including, but not limited to, that the FAA failed to make a prima facie case ruling that: "The FAA's legal arguments in support of its Motion are not persuasive. The "clear" regulatory language does not state that the FAA Form 110A credential allows an ASI (or any federal employee) "free access" to the airport without submitting to an airport operator's TSA approved security procedures, even at a non-passenger screening location. Nor does the extensive regulatory history of Part 153, Subpart A state any intention that the FAA Form 110A credential allows an FAA employee to bypass an airport's TSA approved security screening procedures." (April 21, 2021 Order, P. 14).

The Equal Access to Justice Act provides in pertinent part:

Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

See 28 U.S.C. § 2412(d)(1)(A).

Based on the Court's ruling GOAA is the party under EAJA and GOAA contends that the FAA's positions were not "substantially justified" and that GOAA's fee request is reasonable. Therefore, GOAA is entitled to reimbursement of the reasonable attorneys' fees, costs and expenses it has been forced to incur defending this action brought by the FAA.

The FAA filed its notice of appeal on August 30, 2021, which is still pending. GOAA is filing this motion/application for attorneys' fees and expenses within the 30-day statutory deadline under EAJA in an abundance of caution, but believes this motion/application is stayed pursuant to 14 C.F.R. 14.20 and/or does not run until the appeal becomes final and non-appealable. However,

should this Court find that the stay is not in place, GOAA requests an additional 30 day from the Court's Order in which to finalize this motion/application pursuant to 28 U.S. Code § 2412.

CONCLUSION

For the reasons set forth above, GOAA asserts that it is entitled to an award of reasonable attorneys' fee and expenses in an amount to be determined, 30 days after a final order is issued on the FAA appeal, if applicable, whereby GOAA shall file an amended motion/application under 28 U.S.C. § 2412(d)(1).

DATED: September 17, 2021

Respectfully submitted,

NELSON MULLINS RILEY &
SCARBOROUGH, LLP

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Attorneys for GREATER ORLANDO
AVIATION AUTHORITY

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Application for Fee Award and Expenses Under the Equal Access to Justice Act and Unopposed Request to Stay Petition Until Resolution of Petitioner's Appeal on September 17, 2021, has been dispatched this date by Federal Express to:

Original and One Copy

Hearing Docket
Federal Aviation Administration
800 Independence Ave., SW
Washington, DC 20591
Attn: Hearing Docket Clerk, AGC-430
Wilbur Wright Building – Suite 2W10000

One Copy:

Honorable J.E. Sullivan, *Administrative Law Judge*
Office of Hearings, M-20
U.S. Department of Transportation
1200 New Jersey Ave., S.E. (W58-222)
Washington, D.C. 20590
And, via email: m20.HrgDocs@dot.gov

I also certify that the foregoing has been sent to FAA counsel, by electronic mail delivery
and/or U.S. Mail to:

Brett D. Weingold, Esq.
Attorney, FAA Office of the Chief Counsel
Enforcement Division, AGC-300
800 Independence Ave., SW, Room 917-N
Washington, DC 20591
Email: Brett.Weingold@faa.gov

Dated: September 17, 2021

NELSON MULLINS RILEY &
SCARBOROUGH, LLP

/s/ Nicolette C. Vilmos
Nicolette Corso Vilmos (0469051)